

Serial No. 10/673,281
Amdt. dated January 8, 2007
Reply to Office Action of September 8, 2006

Docket No. CIT/K-0107B

REMARKS

Claims 1-3, 5-12, 18, 20-23, and 29-64 are pending.

Reconsideration of the application is respectfully requested for the following reasons.

I. Double-Patenting Rejection: Statutory Same-Invention-Type.

In the Office Action, the Examiner issued a double-patenting rejection of claims 1, 5-9, 11, 12, 18, and 20-23 on grounds that these claims recite the same invention as claims in U.S. Patent No. 6,643,643. Applicants traverse this rejection for the following reasons.

In order for a same-invention-type double-patenting rejection to be proper, the claims in the asserted reference must define the *identical invention* as defined in the rejected claims. MPEP § 804. A same-invention-type double-patenting rejection is, therefore, held to the same standard as a § 102 rejection, in that there can be no differences whatsoever between the rejected claims and the claims in the asserted reference.

The test for determining whether there are no differences is stated in § 804 as follows: Whether a claim in the application can be literally infringed without literally infringing a corresponding claim in the patent. Or, put differently: Is there an embodiment of the invention that falls within the scope of one claim, but not the other. The double-patenting rejection of claims 1, 5-9, 11, 12, 18, and 20-23 is improper under this test.

A. Claims 1, 5-9, 11, and 12.

Claim 1 of the present application recites “wherein said data structure includes reliability information indicating a reliability of the weight information.” This claim was indicated to define the same invention as claim 1 in the 643 patent. However, the 643 patent recites “wherein the data structure . . . further comprises authority information which limits an update of the weight information by a user feedback.” (Emphasis added).

Two claims may recite the same invention using different words, and under these circumstances a same-invention-type double-patenting rejection would be proper. However, this situation does not exist here.

The Examiner appears to have equated “reliability information” with the “authority information” recited in claim 1 of the 643 patent. Assuming for the moment that this correspondence is properly drawn, claim 1 does not recite that the reliability information in any way “limits an update of the weight information by a user feedback” as recited in claim 1 of the 643 patent. Rather, claim 1 of the present application recites that the reliability information “indicates a reliability of the weight information.” The uses of the reliability information and authority information are therefore recited to be different.

Moreover, while claim 1 of the present application recites an updating step, this claim does not recite any indication of limiting the update as is recited in claim 1 of the 643 patent.

As a result of these differences, it is clear that the test for issuing a proper same-invention-type double-patenting rejection has not been made. For example, claim 1 of the present application may be literally infringed by a data structure that includes reliability information indicating a reliability of weight information. However, this reliability information may not in any way limit an update of the weight information by a user feedback. Under these circumstances, claim 1 of the 643 patent would not be infringed.

This is because the authority information and reliability information, according to some embodiments, may be different codes. See, for example, page 10, lines 16-23, and Figure 2 which describes and shows that authority and reliability codes are different features. Thus, in keeping with the test in § 804, there does exist an embodiment of the invention that falls within the scope of claim 1 of the present application but does not fall within the scope of claim 1 of the 643 patent.

For all the foregoing reasons, the double-patenting rejection of claim 1 and dependent claims 5-9, 11, 12 is improper.

B. Claims 18 and 20-23.

Claim 18 was rejected for reciting the same invention defined in claim 19 of the 643 patent. Claim 18 recites “reliability information representing a reliability of the variable information.” But, claim 19 recites these same features and additionally recites “wherein the

Serial No. 10/673,281
Amdt. dated January 8, 2007
Reply to Office Action of September 8, 2006

Docket No. CIT/K-0107B

reliability of the variable information is obtained based on authority of user feedback.” Claim 18 of the present application does not recite these features and therefore defines an invention different from claim 19. That is, a data structure that literally infringes claim 18 may not literally infringe claim 19. Accordingly, the same-invention-type double-patenting rejection of claim 18 and dependent claims 20-23 is improper.

For all the foregoing reasons, withdrawal of the rejection is respectfully requested.

II. Double-Patenting Rejection: Non-Statutory Obviousness-Type.

The Examiner issued a double-patenting rejection of claims 2, 3, 10, and 29-59 on grounds that these claims recite an obvious variant of claims in U.S. Patent No. 6,643,643. While Applicants maintain that these claims are sufficiently different to render them non-obviousness, Applicants have submitted a Terminal Disclaimer with this paper to overcome the rejection.

III. The Rejection under 35 USC § 102(e).

Claims 1-3, 5, 18, 20, 29-31, 37-39, 48-50, and 59 were rejected for being anticipated by the Wang patent. This rejection is respectfully traversed for the following reasons.

Claim 1 recites receiving reference multimedia data with a data structure that has three types of information: (1) features of said reference multimedia data, (2) weight information of said features, and (3) **reliability information indicating a reliability of the weight information**. The Wang patent does not disclose these features.

In rejecting claim 1, the Examiner indicated that column 12, lines 62-66, recites the reliability information of claim 1. Here, Wang discloses three parameters (hue, saturation, value) that are used to portray the skin color of a face. These parameters are weighted (.5 hue, .3 saturation, .2 value) to reflect their significance to a face identification.

Thus, the weight information in Wang is assigned to determine the significance of the parameters (namely hue, saturation, and value) which has been indicated to correspond to the “features” recited in claim 1. Wang does not disclose reliability information indicating a reliability of the weight information itself, i.e., Wang does not disclose reliability information which indicates the reliability of the weights .5, .3, and .2 assigned to the parameters hue, saturation, and value. Absent a disclosure of these features, the Wang patent cannot anticipate claim 1 or any of its dependent claims.

Serial No. 10/673,281
Amdt. dated January 8, 2007
Reply to Office Action of September 8, 2006

Docket No. CIT/K-0107B

Moreover, the Examiner has not even acknowledge the Rule 132 Declaration that was submitted with the original application papers. The Rule 132 Declaration specifically addresses the deficiencies of the Wang patent as an anticipatory reference against claim 1. In the Declaration the declarant, who qualifies as at least one of ordinary skill in the art, stated that the search inquiry of Wang does not correspond to the data structure recited in claim 1.

Previously, the Examiner relied on the re-ranking step and threshold variance values of Wang for providing the reliability information of claim 1. In the present Office Action, the Examiner has appeared to revise her position, now relying on the weighted parameters recited at column 12 for the reliability information. This change in position, however, does not negate the evidentiary value of the statements set forth in the Rule 132 Declaration.

Under MPEP § 716.01, when a Rule 132 Declaration is presented to traverse a rejection, the patent examiner is required to evaluate the Declaration. If the Examiner disagrees, the Examiner must provide specific reasons on the record as to why she considers the Declaration deficient. The Examiner has not done so. In fact, the Examiner has not even acknowledged the filing of the Declaration.

In evaluating the Rule 132 Declaration, the Examiner must realize that they are not mere arguments from an attorney. Rather, they are to be considered as evidence of non-obviousness from one of ordinary skill in the art. In this case, the Rule 132 Declaration filed with the original application papers sets forth proof that the Wang patent does not disclose the reliability

information recited in claim 1. This proof is based at least on the following numbered statements, which remain directly relevant for purposes of traversing the § 102(e) rejection:

9. The Wang patent does not teach or suggest a data structure as recited in claim 1 which includes reliability information of any type, let alone reliability information which indicates a reliability of weight information corresponding to features of reference multimedia data included in the data structure.
12. The Wang patent does not teach or suggest that its search inquiry includes any information indicating how reliable those ranking values are, i.e., the Wang search inquiry does not include reliability information indicating reliability of weight information included in a data structure as recited in claim 1.
15. In summary, the Wang patent does not teach or suggest a data structure used as a basis for performing an image or multimedia data search that includes A reliability information indicating a reliability of the weight information as recited in claim 1.

The Declaration, therefore, operates to rebut any *prima facie* case of anticipation that may have been established based on Wang. Moreover, Applicants will submit in the very near future a second Rule 132 Declaration to provide evidence that column 12, lines 62-66, of the Wang patent does not disclose the reliability information recited in claim 1. The Second Declaration is to be given the same substantive consideration in terms of its value as evidence of a lack of anticipation by Wang as the first Declaration.

For all of the foregoing reasons, it is respectfully submitted that claim 1 and its dependent claims are not anticipated by the Wang patent.

Claim 18 recites a data structure that includes “reliability information representing a reliability of the variable information.” As evidenced by both Rule 132 Declarations, the Wang patent does not disclose these features.

Claim 29 recites a data structure that includes “reliability information indicative of a reliability of the weight information.” As evidenced by both Rule 132 Declarations, the Wang patent does not disclose these features.

Claim 37 recites obtaining a data structure which includes “reliability information indicative of a reliability of the weight information.” As evidenced by both Rule 132 Declarations, the Wang patent does not disclose these features.

Claim 48 recites a data structure having “reliability information indicative of a reliability of the weight information.” As evidenced by both Rule 132 Declarations, the Wang patent does not disclose these features.

Claim 59 recites “determining reliability of extracted characteristic attributes of the image.” The Wang patent does not disclose these features.

IV. The Rejections under 35 USC § 103(a).

Claims 6-11 were rejected for being obvious in view of a Wang-Kinra combination. This rejection is traversed on grounds that the Kinra patent does not teach or suggest the features of base claim 1 missing from the Wang patent.

Claims 12, 21-23, 32-36, 40-47, and 51-58 were rejected for being obvious in view of a Wang-Kinra-Rose combination. This rejection is traversed on grounds that the Rose patent does not teach or suggest the features in the independent claims missing from the Wang and Kinra patents.

V. New Claims.

New claims 60-64 have been added to the application.

Claim 60 recites that “the reliability information is different from the weight information.” These features are not taught or suggested by the references of record. As previously indicated, column 12 of Wang discloses that the weights assigned to each parameter (hue, saturation, value) indicate a significance of the parameters. Wang does not disclose additional information which is different (e.g., separate and distinct) from the weight information and that indicates a reliability of the weight information. Wang, therefore, does not disclose the features of claim 60 and the second Rule 132 Declaration provides evidence of the same. Claims 62-64 are distinguishable for similar reasons.

Claim 61 recites that “the reliability information is different from the variable information.” Wang also does not teach or suggest these features and the Second Rule 132 Declaration provides evidence of the same.

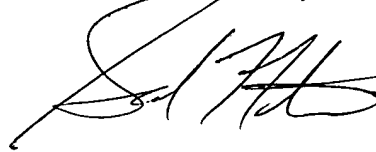
Serial No. 10/673,281
Amdt. dated January 8, 2007
Reply to Office Action of September 8, 2006

Docket No. CIT/K-0107B

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and timely allowance of the application are respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
FLESHNER & KIM, LLP



Daniel Y.J. Kim, Esq.
Registration No. 36,186

Samuel W. Ntiros, Esq.
Registration No. 39,318

P.O. Box 221200
Chantilly, Virginia 20153-1200
703 766-3701 DYK/SWN:knh
Date: JANUARY 8, 2007

Please direct all correspondence to Customer Number 34610